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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,894	07/24/2006	Didier Courtois	112701-735	8671

  

29157	7590	01/07/2008
BELL, BOYD & LLOYD LLP		
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EXAMINER	
MCCORMICK, MELENIE LEE	

  

ART UNIT	PAPER NUMBER
1655	

  

NOTIFICATION DATE	DELIVERY MODE
01/07/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/595,894		COURTOIS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Melenie McCormick		1655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,4-13 and 16-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,14,15 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/2006</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's election without traverse of Group II, claims 3, 14-15 and 19 in the reply filed on 12 December 2007 is acknowledged. In a telephone conversation with Robert Barrett on 14 December, the species Chichorium was also elected.

Claims 1-2, 4-13, and 16-18 are withdrawn from consideration.

Claims 3, 14-15 and 19 are presented for examination on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of the claim are unclear because one of ordinary skill in the art could not readily conclude whether they were infringing upon the claim. Claim 1 is directed toward basically drying plant material, claim 3 is directed toward a product obtainable by claim 1. It is deemed that a multitude of products could potentially be obtained from the process of claim 1 because the process of claim 1 states 'comprising' which is open language and thus allows for the inclusion of unspecified method steps. The dried product of plant material has not been elucidated and therefore, its total biochemical and phytochemical ingredients have not been fully disclosed. Thus, the ordinary artisan would not be able to ascertain if their natural product, say a particular

phytochemical, would not know if they were infringing on the vast breadth of claim 3 which could potentially read on DNA, proteins, phytochemicals and inert cellulose materials for example.

Applicant may overcome the rejection by replacing the term 'obtainable' with the term obtained.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ecochard (US 5,916,622).

A food or orally ingestible product comprising dried chicory which comprises glucosamine is claimed.

Ecochard teaches a foodstuff which comprises a chicory powder (see e.g. col 3, lines 18-24). Ecochard further teaches that the chicory is dried (formed into a powder) by heating the chicory to a temperature of 95°C, which is below 110°C, as instantly claimed. Ecochard further teaches that this heating takes place for 90 or 600 seconds (see e.g. col 4, lines 20 and 27). This dried chicory would necessarily contain

glucosamine because it was produced in the same manner as instantly disclosed (i.e. drying the chicory at a temperature below 110°C for less than 1 week).

Therefore, the reference is deemed to anticipate the instant claims above.

With respect to the USC 102 rejection above, please note that the Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether Applicants' dried chicory composition differs and, if so, to what extent, from that of the discussed reference. Therefore, with the showing of the reference, the burden of establishing non-obviousness by objective evidence is shifted to the Applicants.

Claims 14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischner (US 6,420,350).

An orally ingestible composition, supplement or tablet comprising glucosamine is claimed.

Fleishcner teaches a supplement which comprises glucosamine (see e.g. col 3, lines 17-24 and claim 1). Fleishcner further teaches that the composition may be in form of a tablet (see e.g. col 3, line 35). Although Although Fleishcner does not necessarily teach that the glucosamine was obtained from a dried plant, the composition taught by Fleishcner comprises glucosamine as instantly claimed.

Therefore, the reference is deemed to anticipate the instant claims above.

Claims 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Noel (US 5,141,964).

A composition comprising glucosamine is claimed.

Noel teaches a cosmetic composition comprising glucosamine (see e.g. claim 1). Noel further teaches that the composition may be a cream, toner, body emulsion, liquid soap and dermatological bar which is intended to be applied to the skin (see e.g. claims 6 and 7). Although Noel does not necessarily teach that the glucosamine was obtained from a dried plant, the composition taught by Noel comprises glucosamine as instantly claimed.

Therefore, the reference is deemed to anticipate the instant claims above.

With respect to the art rejections above, please note that "the patentability of a product does not depend upon its method of production. If the product in [a] product-by-process claim is the same as or obvious from a product of the prior art, [then] the claim is unpatentable even though the prior [art] product was made by a different process." In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 218 USPQ 289, 292 (Fed. Cir. 1983).

### **Conclusion**

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No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melenie McCormick whose telephone number is (571) 272-8037. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melenie McCormick  
Examiner  
Art Unit 1655

/Patricia Leith/  
Patricia Leith  
Primary Examiner  
AU 1655 December 20, 2007